

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND) Docket No. 18 C 5587
EXCHANGE COMMISSION,)
)
Plaintiffs,)
)
vs.)
)
EQUITYBUILD, INC., EQUITYBUILD)
FINANCE, LLC, JEROME H. COHEN,)
AND SHAUN D. COHEN,) Chicago, Illinois
) February 7, 2019
Defendants.) 9:53 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff: U.S. SECURITIES & EXCHANGE
COMMISSION
BY: MR. BENJAMIN J. HANAUER
MR. TIMOTHY J. STOCKWELL
175 W. Jackson Blvd., Suite 900
Chicago, Illinois 60604

For Defts. Jerome H.
and Shaun D. Cohen: BRAGANCA LAW, LLC
BY: MS. CELIZA BRAGANCA
230 South Clark Street, Suite 262
Chicago, Illinois 60604

For the Receiver: RACHLIS, DUFF, PEEL & KAPLAN, LLC
BY: MR. MICHAEL RACHLIS
542 South Dearborn, Suite 900
Chicago, Illinois 60605

For Wilmington Trust: PLUNKETT COONEY, P.C.
BY: MR. JAMES M. CROWLEY
221 N. LaSalle Street, Suite 1550
Chicago, Illinois 60601

1 APPEARANCES (Cont'd):

2 For Citibank: STAHL, COWEN, CROWLEY, ADDIS, LLC
3 BY: MR. RONALD A. DAMASHEK
4 55 West Monroe Street, Suite 1200
Chicago, Illinois 60603

5 For Citibank, U.S. Bank, FOLEY & LARDNER
6 Wilmington Trust, and BY: MS. JILL NICHOLSON
Fannie Mae: 321 North Clark Street, Suite 2800
7 Chicago, Illinois 60654

8 For Midland Loan Svcs.: AKERMAN, LLP
9 BY: MR. THOMAS B. FULLERTON
10 71 South Wacker Drive, 46th Floor
Chicago, Illinois 60606

11 For Bloomfield Capital: HONIGMAN, LLP
12 BY: MS. HELEN M. HAPNER
13 155 North Wacker Drive, Suite 3100
Chicago, Illinois 60606

14 For Capital Investors, GARDINER, KOCH & WEISBERG
15 Capital Partners, MS. MICHELLE M. LaGROTTA
6951 S. Merrill I, LLC, 53 W. Jackson Blvd., Suite 950
16 5001 S. Drexel Blvd. Fund Chicago, Illinois 60604
II, LLC:

17
18 For Freddie Mac, LANDMAN, CORSI, BALLAINE & FORD
19 via teleconference: BY: MR. MARK LANDMAN
120 Broadway
20 New York, New York 10271

21 For Freddie Mac: PILGRIM CHRISTAKIS, LLP
22 BY: MS. JENNIFER L. MAJEWSKI
321 North Clark Street, 26th Floor
23 Chicago, Illinois 60654

24 For BMO Harris: CHAPMAN & CUTLER
25 BY: MR. JAMES P. SULLIVAN
111 West Monroe Street, Suite 1600
Chicago, Illinois 60603

1 APPEARANCES (Cont'd):

2

3 For Liberty EBCP,
4 via teleconference:

JAFFE, RAITT, HEUER & WEISS
BY: MR. JAY L. WELFORD
27777 Franklin Road
Southfield, Michigan 48034

5

6 Also Present:

MR. KEVIN B. DUFF, Receiver

7

8 Court Reporter:

MR. JOSEPH RICKHOFF
Official Court Reporter
219 S. Dearborn St., Suite 1224
Chicago, Illinois 60604
(312) 435-5562

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PROCEEDINGS RECORDED BY
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1 (Proceedings had in open court, in part via telephone
2 conference:)

3 THE CLERK: Case 18 CV 5587, United States Securities
4 and Exchange Commission vs. Equitybuild.

5 MR. HANAUER: Good morning, your Honor, Ben Hanauer
6 and Tim Stockwell for the SEC.

7 MR. RACHLIS: Good morning, your Honor, Michael
8 Rachlis on behalf of the receiver and the receivership. Kevin
9 Duff is here, as well.

10 MR. DUFF: Good morning, your Honor.

11 THE COURT: Good morning.

12 MS. BRAGANCA: Good morning, your Honor, Liza
13 Braganca on behalf of Shaun Cohen and Jerry Cohen.

14 MR. SULLIVAN: Good morning, Judge, James Sullivan on
15 behalf of BMO Harris Bank.

16 MR. CROWLEY: Good morning, your Honor, James Crowley
17 on behalf of one of the Wilmington Trust defendants.

18 MR. DAMASHEK: Ron Damashek on behalf of Citibank, as
19 trustee related to the Dorchester property.

20 MS. NICHOLSON: Good morning, your Honor, Jill
21 Nicholson on behalf of a number of special servicers,
22 including indenture trustees Citibank, U.S. Bank, Wilmington
23 Trust, and Fannie Mae.

24 MS. HAPNER: Good morning, your Honor, Helen Hapner
25 on behalf of creditor Bloomfield Capital.

1 MS. MAJEWSKI: Good morning, your Honor, Jennifer
2 Majewski on behalf of Freddie Mac.

3 MS. LaGROTTA: Michelle LaGrotta on behalf of Capital
4 Investors.

5 MR. FULLERTON: Good morning, your Honor, Tom
6 Fullerton on behalf of Midland Loan Services.

7 THE COURT: And who do we have on the phone?

8 MR. WELFORD: Good morning, your Honor, Jay Welford
9 of the Detroit firm of Jaffe, Raitt, Heuer & Weiss appearing
10 on behalf of Liberty EBCP, LLC, a lender.

11 MR. LANDMAN: And, your Honor, good morning, this is
12 Mark Landman from the firm Landman, Corsi, Ballaine & Ford in
13 New York, and I'm here on behalf of Freddie Mac.

14 THE COURT: All right. So, I feel, looking at the
15 docket, that the government shutdown kind of got us a little
16 bit off track here, and given the general order that was
17 issued by Chief Judge Castillo. And I know that there's
18 continuing proceedings before Magistrate Judge Kim, if I'm not
19 mistaken.

20 And, so, at this point in time -- I had set
21 previously deadlines for the motion for monetary relief, that
22 the SEC has filed. There were response dates that I had set
23 there. I know there might be some confusion as to whether or
24 not those response dates still hold. And, so, current -- they
25 were due on February 1st.

1 So, I'm going to go ahead and, basically, reinstate
2 that motion in the event that the Clerk's Office thinks it's
3 no longer there.

4 Does anyone need any more time to file a response at
5 this point?

6 MS. BRAGANCA: Your Honor, this is Liza Braganca. I
7 have a motion to withdraw pending. And I will alert my client
8 -- should that motion be granted, I will alert my clients to
9 -- that those -- that motion, they still have the right to
10 respond to it. And --

11 THE COURT: I don't know whether they still have the
12 right to respond to it.

13 MS. BRAGANCA: I'm sorry, your Honor, that you would
14 give them the opportunity to respond to it.

15 THE COURT: Right.

16 Just so there's no -- well, why don't I do this: As
17 I said, given the shutdown, what I'm going to do is I'm going
18 to extend the date by which anyone should file a response to
19 the SEC's motion for monetary relief to February 15th. Okay?

20 And, then, I'll give the SEC until March 8th for
21 reply. All right? So --

22 MS. BRAGANCA: Your Honor -- okay.

23 THE COURT: I, also, in the December 18th order,
24 directed that any motion by the receiver with regard to a
25 recommended claims process be filed and noticed for

1 presentation. Obviously, that took place during the shutdown.

2 What's the status of that?

3 MR. RACHLIS: We are -- the shutdown did impact some
4 of the mechanics of trying to get this done. This week we
5 actually met with the SEC in regards to that. And, so, we
6 believe we're about two weeks away from having that claims --
7 the motion for approval of a claims process in front of your
8 Honor.

9 THE COURT: Okay. Very good.

10 So, I will extend the date by which the receiver
11 should file a motion for a proposed claims process to February
12 22nd. Okay? And you can notice it up for the following week.

13 Are there any other deadlines out there that I need
14 to either reset or revive at this point?

15 Yes?

16 MR. CROWLEY: Your Honor, the receiver was supposed
17 to file -- this is Jim Crowley -- James Crowley.

18 The receiver was supposed to have filed a report
19 January 31st. It hasn't been done. So, that's late.

20 MR. RACHLIS: Same issue, your Honor. Typically, our
21 process has been we would draft that. We will give some -- we
22 couldn't get input from the SEC or whatnot with the shutdown.
23 We anticipate having that filed by the end of this month.

24 THE COURT: Okay.

25 So, by February 28th?

1 MR. RACHLIS: Yes.

2 THE COURT: Very good.

3 Is there anything else that I can address today?

4 MS. BRAGANCA: Yes, your Honor.

5 On December 19th, I filed a motion to withdraw;
6 alerted my clients that that had been filed. I've been in
7 communications with them. Last night they sent me something
8 and asked me to file their opposition to it.

9 May I approach and provide you with a copy of it? I
10 didn't have the opportunity to file in chambers.

11 THE COURT: I haven't taken a look at it, so I don't
12 think it's going to help me particularly.

13 Was that the only response that was filed?

14 MS. BRAGANCA: That is the only response, your Honor.

15 THE COURT: Why don't you go ahead and hand it up,
16 then.

17 MS. BRAGANCA: Okay.

18 (Document tendered to the Court.)

19 MS. BRAGANCA: It's very brief.

20 (Brief pause.)

21 MS. BRAGANCA: It's a second copy of the same thing.

22 THE COURT: Does the SEC have a position one way or
23 the other with regard to the motion?

24 MR. HANAUER: No, your Honor.

25 THE COURT: And can you remind me, generally

1 speaking, the basis for your motion for withdrawal?

2 MS. BRAGANCA: Yes, your Honor. It's that I have not
3 been paid since the release of funds. That's been since
4 August.

5 THE COURT: Okay.

6 Well, at this point, I've reviewed the opposition to
7 the motion of Ms. Braganca to withdraw from this case filed by
8 Jerome Cohen and Shaun Cohen. They're not entitled to free
9 counsel in this case. And, so, therefore, the motion to
10 withdraw is granted.

11 MS. BRAGANCA: Thank you, your Honor.

12 THE COURT: Make sure that you provide them with a
13 copy of the -- did you file with the court a notification
14 form?

15 MS. BRAGANCA: I did, your Honor.

16 THE COURT: Make sure you provide them with a copy of
17 the order that's issued today.

18 MS. BRAGANCA: I will do that. Thank you.

19 THE COURT: Is there anything else that I can address
20 for the parties today?

21 (No response.)

22 THE COURT: All right.

23 And I see, as I said, that there's other hearings
24 before Judge Kim. Let's go ahead and set this case for
25 further status the week of April 15th.

1 Carmen --

2 MR. HANAUER: Your Honor?

3 THE COURT: Yes.

4 MR. HANAUER: I apologize. I'm going to be out of
5 town that week. That's the Chicago Public Schools spring
6 break.

7 THE COURT: April 8th -- the week of April 8th.

8 THE CLERK: April 9th at 9:00 o'clock.

9 THE COURT: And I'll keep an eye on the docket to see
10 if Magistrate Judge Kim issues any orders with regard to the
11 pending motions.

12 With regard to the -- and once I get the motion from
13 the receiver with regard to the claims process, I'll set a
14 briefing schedule, so that no one has to appear for that.

15 Thank you.

16 MR. RACHLIS: Your Honor does want that noticed up
17 the following week, correct?

18 THE COURT: Yes.

19 MR. RACHLIS: We'll do that. Thank you.

20 THE COURT: Thank you.

21 MR. HANAUER: Thank you, your Honor.

22 MR. DUFF: Thank you, your Honor.

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1 I certify that the foregoing is a correct transcript from the
2 record of proceedings in the above-entitled matter.

3 /s/ Joseph Rickhoff
4 Official Court Reporter

July 3, 2019